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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 34th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 29 August 1991, at 10 a.m.

Chairman: Mr. JOINET

later: Mr. TURK

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The meeting was called to order at 10.35 a.m.

THE NEW INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS (agenda item 7) (continued)

(a) THE ROLE AND EQUAL PARTICIPATION OF WOMEN IN DEVELOPMENT (continued) (E/CN.4/Sub.2/1991/59; S/22799)

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 8) (continued) (E/CN.4/Sub.2/1991/17, 18, 38 and Add.1, 47, 54 and 59; E/CN.4/Sub.2/1991/WP.3; E/CN.4/Sub.2/1991/NGO 2, 6, 7, 29 and 31; E/CN.4/Sub.2/1990/19)

1. Mr. AL-DOURI (Observer for Iraq) said that it was difficult to speak of a new international economic order, since that order would not see the light of day in the context of the new international situation, with the emergence of a single Power that was dominating the destiny of the world. The new international economic order would therefore remain only an aspiration for the peoples of the third world, and without it human rights would not be realized in the way that the international community had hoped in establishing its covenants and conventions.

2. With regard to agenda item 8 he would confine himself to the tragic events that had taken place in Iraq, leaving the Sub-Commission to imagine the suffering of the Iraqi people. Mr. Treat had indicated that he was not against the Iraqi people; he would like to see evidence of that in view of what had been done by the United States, the United Kingdom and France by way of destruction, murder and terrorism to the entire Iraqi people. The sufferings of the Iraqi people since 2 August 1990 until the present were the outcome of what had been imposed by the Security Council resolutions; those resolutions could not be justifiably maintained, since the causes that had led to their adoption were no longer applicable. The ever-increasing repercussions of the embargo on the entire Iraqi people were not consistent with the allegations that those sanctions were not directed against the Iraqi people.

3. Four problem areas illustrated the human suffering in Iraq. The first was food: the monthly per capita allowance, on the basis of an equitably applied rationing system, was 8 kilogrammes of flour, 1.5 kilogrammes of sugar, 50 grams of tea and 250 grams of cooking oil. As for the remaining essential food items, citizens were obliged to purchase them at prices sometimes 40 times higher than their pre-war price, owing to their non-availability on the market as a result of the embargo. The price of 1 kilogramme of meat, for example, had reached 18 dinars, about $US 54; one egg cost half a dinar, or $US 1.50; and the price of 1 kilogramme of dried milk was 10 dinars, or about $US 30.

4. The situation had led to a rise in the incidence of malnutrition, not only among children but among all members of society. Iraq imported $US 6 billion worth of foodstuffs each year; therefore the amount of oil that the United States, Great Britain and France, in other words the Security Council, had permitted Iraq to sell - $US 1.6 billion over a period of six months - did not pay for more than one sixth of Iraq's real needs, in

particular since 30 per cent of the oil revenue would be paid into the compensation fund and further amounts would go towards covering United Nations costs.

5. The second problem was water. Plants for treating sewage and producing drinking water had suffered extensive damage: Iraqis were being supplied with one quarter of the quantity of drinking water they were getting before the war, and the quality did not meet specified health standards because of the shortage of material for purification and the lack of electricity, which in turn had led to a stoppage of the sewage network. Sewage had seeped into streets and rivers, causing epidemics of typhoid and cholera. The United Nations estimated the cost of restoring water to minimum acceptable standards at $US 180 million.

6. The third problem was health. The deterioration of health in Iraq since 2 August 1990 was attributable to the lack of medical care, owing to a shortage of medicines, medical and surgical equipment, and spare parts and requisite chemical compounds. Iraq's annual imports of medicine had amounted to $US 360 million.

7. Communications were the fourth problem: internal and external telephone communications had been suspended after the destruction of internal telephone exchanges; 400,000 out of 900,000 telephone lines had been destroyed, along with satellite ground stations.

8. All that represented only a fraction of the sufferings of the Iraqi population, which had been described in the report of the inter-agency mission headed by Prince Sadruddin Aga Khan (S/22799). The appeal drafted by the Sub-Commission under agenda item 4 was welcome; however, it was rather modest and formulated in a way that did not reflect the requisite degree of concern on the part of the Sub-Commission for the sufferings of Iraqi civilians. The appeal remained vague and did not focus on the principal problem, which was the lifting of sanctions against Iraq after it had fulfilled all its obligations under the Security Council's resolutions. The continuation of those sanctions, with all they implied for the suffering of the Iraqi people, was a flagrant violation of the most fundamental principles of international law.

9. Mrs. RADIC (Observer for Yugoslavia) said that the International Federation for Human Rights in its statement under agenda item 8 had once again shown itself to be a superficial and irresponsible mouthpiece of its associated member organization representing a part of the Albanian national minority living in Kosovo and Metohija. While allegedly defending the rights of Albanians to education, the Federation was in fact waging a campaign against a legitimate Government, its policy and its officially adopted educational programme. The Federation had sided with Albanian teachers who had flatly refused to teach on the basis of the education programme of the Republic of Serbia, and consequently had been dismissed in accordance with the law.

10. In its statement the previous year, the International Federation of Human Rights had expressed regret that a comparatively smaller number of Serbs had lost their lives in ethnic conflicts with Albanians, in relation to the number of Albanian casualties. The same distorted attitude had been seen in the current year in the Federation's message that those teachers who ignored,

boycotted and refused to carry out the official programme for public schools in the Republic had the right to do so, and that the Sub-Commission should be an accomplice and give legitimacy to those actions.

11. There had been cases of dismissals of members of the Albanian minority in various fields of employment, such as education, the judiciary and enterprises. Several government commissions had investigated those cases and the results of their analysis were at present before the Federal Government for consideration. There was evidence that those who had been dismissed from work either had been absent from their places of work for a prolonged period without justification, or had boycotted work, or had left of their own free will for political reasons, or had demolished machines, destroyed files and official documentation, or simply been incompetent. Those individuals had not brought their cases before the courts, proving that they were not interested in their own labour rights but preferred to sacrifice their employment to blind and unrealistic political goals.

12. The CHAIRMAN said that the Sub-Commission had concluded its consideration of agenda items 7 and 8.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1991/5-10, 48 and 55; E/CN.4/Sub.2/1991/NGO/11, 15, 22 and 32; A/46/171-E/1991/61; E/CN.4/Sub.2/1990/9-12; E/CN.4/Sub.2/1989/42 and Add.1; E/CN.4/Sub.2/1987/31)

13. Mr. van BOVEN, Special Rapporteur, introducing his progress report (E/CN.4/Sub.2/1991/7) on the study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, said that it should be read in conjunction with the previous year's preliminary report (E/CN.4/Sub.2/1990/10), which included a tentative outline of the study.

14. In accordance with that outline, he had analysed the relevant decisions and views of international human rights organs, but had first defined the scope of the study in the light of the previous year's discussions as to whether it would deal only with compensation, rehabilitation and remedies for individuals or for the rights of collectivities as well; whether it addressed the victims of environmental degradation and depletion of natural resources; whether it would include victims of gross violations of economic, social and cultural rights; and whether it would cover not only victims of racial discrimination but of discrimination based on religion or belief. He had said that the study should deal not only with individuals, but, in appropriate cases, with entitlement to compensation of collectivities, an idea already present in the preliminary report. It could not be denied that gross violations of human rights affecting individuals and collectivities often occurred as the result of political oppression, systematic discrimination, bad development, plundering of natural resources, environmental spoliation, illegal occupations and situations of armed conflict.

15. He had elaborated on those issues in Chapter I of his progress report, where issues of compensation had come up in relation to land rights and rights relating to natural resources and environmental protection, which were vital to the lives and well-being of indigenous peoples. That question had also

been discussed in the draft declaration on the rights of indigenous peoples, and had been included in ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. There were also interesting references in the materials of the Ad Hoc Working Group of Experts on Southern Africa in connection with Namibia. The Working Group had recommended that the Commission should stress compensation to the people of Namibia, but the Commission had not acted on that recommendation. The issue of environmental damage was also pertinent, as borne out by Principle 22 of the Declaration of the United Nations Conference on the Human Environment, adopted in Stockholm in 1972. Issues relating to the arrest, extradition and punishment of persons responsible for war crimes and crimes against humanity also fell within the scope of the study, and the plight of the survivors of Nazi concentration camps who had been the victims of scientific experiments had been raised in 1950 by the Commission on the Status of Women; correspondence on compensation had taken place with the Federal Republic of Germany and the then German Democratic Republic. The German Democratic Republic at that time had taken no responsibility in the matter, but the Federal Republic of Germany had responded constructively. The issue of compensation to victims had also come up in a number of General Assembly resolutions on situations of armed conflict and the remnants of war: recently the Security Council had reaffirmed that Iraq was liable under international law for any direct loss or damage including environmental damage, and depletion of natural resources, or injury to foreign Governments, nationals and corporations as a result of its unlawful invasion and occupation of Kuwait; and a special fund had been created for compensation.

16. Replying to observations by colleagues at the previous session, he stressed that gross violations of economic, social and cultural rights, as well as practices or policies of religious discrimination and intolerance could also give rise to just entitlement to compensation. He was fully aware that broadening the scope of his study might give rise to a complex question of the definition of rights and responsibilities: the matter had to be approached with prudence. He had therefore studied the case law developed by the Human Rights Committee which had dealt with a large number of communications and formulated its views under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights. Most of the cases dealing with compensation had pertained to articles 6, 7, 9, 10 and 14 of the Covenant. In particular he had studied the report by Mr. Chernichenko and Mr. Treat on the right to a fair trial (E/CN.4/Sub.2/1991/29): wherever the principle of a fair trial had not been respected, the question of compensation could arise.

17. He had studied the Human Rights Committee's approach to the question of remedies, including compensation, vis-à-vis articles 6 and 7 of the Covenant. As the Committee had once indicated, those articles concerned violations of special gravity. An analysis of relevant cases showed a definite link between effective remedies to which victims were entitled, remedies aimed at the prevention of recurrence of similar violations, and the issue of the follow-up by the State party with respect to the remedies called for by the Committee. As regards the right to have an effective remedy, the Human Rights Committee had repeatedly taken the view that a State party was under an obligation to investigate the facts, to take appropriate action and to bring persons found responsible to justice. Those remedies were directed against the perpetrators

of human rights violations. There was also the obligation to extend to the victim treatment in accordance with the provisions and guidelines of the Covenant, to provide medical care and pay compensation to the victims or their family, not only for physical but for mental injury or damage. It was not entirely clear whether the Committee recognized, in the case of the death or disappearance of a person, that the family members were entitled to compensation for their own suffering and anguish, or that they were entitled to compensation for injury to the immediate victim. With regard to the preventive aspect of remedies, the Human Rights Committee had frequently called on States parties to take steps to ensure that similar violations of human rights did not occur in the future. As regards follow-up by the States parties concerned, for a long time the Human Rights Committee, despite its concern, had not taken action on follow-up to the Committee's views by States parties; recently however it had been trying to develop a dialogue with States parties to encourage the implementation of remedial measures. In July 1990 the Human Rights Committee had decided to appoint a special rapporteur for the follow-up of views.

18. In his report he had mentioned only one case under article 14 of the Convention on the Elimination of Racial Discrimination because case law had not been much developed under that article. A limited number of States parties had accepted article 14, which related to the right of individual petition. He had also reviewed some recent cases of the Committee against Torture.

19. The Inter-American Court of Human Rights was another important international human rights body. In recent cases on Honduras, the Court had put forward some important considerations. Three aspects deserved special attention: the obligation to prevent, to investigate and to punish; the views of the Court in establishing compensatory damages; and the issue of follow-up and monitoring. The Court had stressed the notion of prevention and it had stated that States must prevent, investigate and punish any violations of the rights recognized by the American Convention on Human Rights and had ruled: "The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victims compensation" (para. 29). As regards the amount and nature of compensation, the Court had ruled that reparation consisted in full restitution, including the restoration of the prior situation, the reparation of the consequences of the violation and indemnification for patrimonial and non-patrimonial damages, including emotional harm (para. 31). With regard to the scope of reparation, the Court had observed that such measures as investigation into the facts, the punishment of those responsible, a public statement condemning the practice of involuntary disappearances and in fact the judgement of the Court itself on the merits constituted a part of reparation and moral satisfaction of significance and importance for the families of the victims (para. 32). Finally, the Court had stressed the need to monitor follow-up action: it would be able to close the file only when compensation had been fully paid.

20. He hoped in future to analyse further and complete his work on the decisions and views of international human rights organs, including unexpected

sources such as pronouncements and decisions in the framework of ILO. Still before him was also the analysis of national law and practice: States Members of the United Nations had been requested by a note verbale to provide information; a few Governments had replied, but many had not. It was doubtful whether the method of a questionnaire would yield the requisite information, but he hoped that Governments would cooperate. Finally, he hoped at the end of his study to draw up principles and guidelines on the question to provide a useful contribution to the Decade for International Law proclaimed for the 1990s by the General Assembly.

21. Mrs. KSENTINI, Special Rapporteur, introducing her report (E/CN.4/Sub.2/1991/8) on human rights and the environment, said that she would like to thank the Preparatory Committee for the United Nations Conference on Environment and Development, WHO and ILO as well as the non-governmental organizations including, in particular, Sierra Club Legal Defence, National Heritage Institute and The Four Directions Council for their contributions in documentary and other forms in the preparation of her report.

22. The conceptual aspects of the relationship between human rights and the environment were set out in Chapter I, Section A. On the basis of the Stockholm Declaration of 1972, States had shown increasing interest in the protection of the environment and in establishing a close relationship between the need for such protection and the protection of the fundamental human rights to freedom, legality and satisfactory living conditions in a satisfactory environment. That relationship had been supported by the approach adopted by many environmental groups and had led to the insertion of the human factor into the environmental issue.

23. It had however been difficult to prove the evolution of the linkage between human rights and the environment and she had accordingly undertaken research into the provisions contained in various human rights instruments which might be applicable to the environmental issue. Her research had not established any specific linkage but it was clear that the human rights instruments did recognize a number of human rights which could only be enjoyed in a healthy and appropriate environment. That theme had been developed in Section B of Chapter I.

24. She had also felt it necessary to ascertain whether ecological rights or a right to the environment was recognized in standards and principles set out in national or international law. Part C of Chapter I contained an analysis of certain constitutional provisions and she had been struck by the number of national constitutions which contained provisions relating to the environment. She proposed to continue her investigation of that issue in future reports.

25. Chapter II analysed the right to the environment in relation to other human rights; section A dealt with the issue of indigenous people's rights and the environment. She had noted that indigenous peoples had a special relationship with the land and the environment in which they lived. Indigenous peoples had, over a long period of time, developed successful systems of land use and resource management. Those systems had for a long time been considered inefficient, unproductive and primative but, as world opinion had grown more conscious of the environment and particularly of the

damage being done to fragile habitats, there had been a corresponding interest in indigenous land-use practices. The notion of sustainability was the essence of both indigenous economies and their cultures. The special relationship indigenous peoples had to the land and the environment had yet to be recognized by a human rights instrument of the United Nations.

26. It had also become clear that the prevailing development process was not only damaging to the environment but might also be harming the way of life of many people, and especially indigenous peoples. Indeed, it could be said that all environmental degradation had a direct impact on the human rights of the indigenous peoples dependant on that environment.

27. The linkage between the right to development and the environment was examined in Section B of Chapter II in paragraphs 31 to 45. The close relationship which existed between development, which had been recognized as a human right by several international texts including the Declaration on the Right to Development, and the environment illustrated the indivisible and interdependent nature of all human rights. It was impossible to separate the claim to the right to a healthy and balanced environment from the claim to the right to sustainable development.

28. The affirmation of ecological rights as a corollary of recognition of the right to the environment could not be understood by shunning the problem of development in its national and international dimensions; hence the right to the environment could not be conceived and realized without a global view and an approach that quite naturally integrated all considerations connected with the right to development. It might thus be said that a national development strategy was viable from the economic, social and ecological standpoint only if it gained the active adherence of the various social strata of the population. Such adherence could not be gained on the basis of denying the rights of the human person, whether civil and political or social, cultural and economic. Such adherence would also be lacking if the development model recommended was incompatible with the fundamental socio-cultural characteristics of the populations concerned. Moreover it stood to reason that protection of the environment entailed a worldwide multilateral approach and international cooperation that made it possible to uphold the development priorities of the third world countries while respecting the principles of the right to self-determination and the right of every country to its own natural resources and to the free choice of its development model.

29. In section C of Chapter II, she had looked at the issue of assaults on the environment and human rights. There was a close interaction between the assaults made on the environment and the enjoyment of human rights and it was clear that damage suffered by the environment had adverse effects on the enjoyment of human rights. It had not been possible to analyse the deep-seated causes and internal and external factors that maintained the vicious circle which ran from underdevelopment through poverty to environmental degradation and back again. It had also been impossible to draw up a final balance sheet showing the effect of environmental degradation on human rights the enjoyment of which was already very much affected by underdevelopment and poverty in such areas as infant mortality and under-nourishment, illiteracy, lack of primary health care and of social services. It was easy to see however that the poor populations, the

underprivileged strata, the minority groups and others were the most affected in that they were more vulnerable to ecological risks and repercussions; they lacked legal and material means of protection as well as access to information.

30. Other environmental threats affecting human rights included climatic changes, deforestation and wood-stripping and biological diversity. Biological diversity was fundamental to human life so that, when genetic variations were lost, not only were specific and potential properties and adaptations also lost, but with them species were diminished, ecosystems were impaired and the ability to sustain human life was damaged, with the result that the right to life itself was threatened.

31. In the area of pollution, discharge of toxic and dangerous products, the transfer of toxic and dangerous products and wastes across frontiers and their dumping also led to violations of human rights, not only having regard to the risks incurred by man and his environment but also considering the observed trend to export dangerous substances produced in the north to developing countries, particularly in Africa. Such intolerable practices, which imposed on the South risks that the industrialized countries deemed too severe to be borne in the North, were particularly outrageous in that they transferred problems to particularly vulnerable regions and populations where the technical means, including the health infrastructure, to cope with those wastes were not adequate to cope with them.

32. Denial of the right of peoples to self-determination and to dispose of their natural wealth and resources remained one of the deep-seated causes of underdevelopment and of the serious damage inflicted on the environment in formerly colonized countries and countries still under occupation. The right to information was particularly important in that the absence of reliable or accessible information and the refusal to inform contributed to the deterioration of the environment, as explained in paragraph 66 of the report. The list of rights listed in the report was not exhaustive but it had been impossible to go into the subject in detail in the preliminary stage of the study.

33. She invited particular attention to paragraph 69, which affirmed that the ultimate establishment of the right to the environment was impeded by the absence of a precise definition either of the concept of such a right or of the content that right should have. The second shortcoming was concerned with its effective implementation by or on behalf of the beneficiaries.

34. The recognition of the right to the environment had not yet led to the establishment of appropriate legal frameworks for its effective implementation. The practice of the European Commission of Human Rights was however, revelatory in that respect; it had declared inadmissible an application in which the applicant had sought to have the discharge of atomic waste in the North Sea declared contrary to the European Convention on Human Rights. On the other hand, the Commission had recognized in the Arrondelle case that the "unbearable stress" suffered by an applicant living in a house situated between an airport and a motorway entitled her to claim the application of article 8 of the Convention. The way seemed therefore to be clearing towards a guarantee of the right to the environment but it appeared to lie through the guarantees afforded by traditionally recognized rights. In accepting the

aforementioned complaint, the Commission recognized not so much the applicant's right to enjoy a peaceful environment as her right to be protected against the inroads made on her private and family life by the environment.

35. The practice of the United Nations monitoring organs had not yet been established. While the originator of a complaint certainly could not claim violations of rights other than those recognized by the instruments that empowered him to address such a complaint to the committee concerned, it would be interesting to see how far he could at least plead the effects of environmental degradation on the enjoyment of recognized rights.

36. The implementation of the right to the environment appeared to be making more progress in its procedural aspects associated with the realization of the right to participate in the adoption of decisions affecting the environment, the right to information and the right of association. Thus, on 7 June 1990, the countries of Europe had recognized the right of access to information on the environment when the Council of Ministers on the Environment had formally adopted a directive on freedom of access to information on the environment, in which public authorities would, in general, be required to make information on the environment available to any natural or legal person at his request and without his having to prove an interest.

37. Other aspects considered in the report included the right to education, information and participation in decision-making in the environmental field and means of encouraging and mobilizing transnational corporations in the management of the environment in order to protect and enhance it in all countries. Transnational corporations in particular played a significant role in the sectors that directly affected the global environment inasmuch as they were key users of raw materials and the main source of products that could be harmful to the environment. In her next report, she would go into that aspect in more detail.

38. The permissible limits to the right to the environment were analysed in paragraphs 89 to 94. The endeavour to set limits to rights was risky because, if such limits were misapplied, they could take all substance out of the rights. The recognition of rights nevertheless had as its counterpart duties and obligations which gave the rights recognized their full significance and their real dimensions. It might therefore be useful to consider how to prevent an unduly rigid interpretation of human rights from impeding environmental protection measures and how to prevent unduly downright recognition of the right to the environment from leading to "ecological terrorism" that would encroach upon human rights in both their individual and collective dimension.

39. Paragraphs 95 to 105 set out the preliminary conclusions reached by her. The right to the environment could not be reduced to the right of the individual to claim an environment of quality, nor could it be separated from the problem of development and hence from the right of individuals and peoples to sustainable development. The right to the environment was, all things considered, a "right of solidarity" which involved duties and responsibilities at the national and international level. The right to the environment was also a right to the conservation of nature for the benefit of mankind and of future generations. That was a dimension that restored to human rights their original purpose.

40. Mr. Türk took the Chair.

41. Mr. GUISSE, referring to the report on the right to freedom of opinion and expression (E/CN.4/Sub.2/1991/9), said that the issue was very sensitive everywhere and in many countries restrictions had been placed on that right. The Special Rapporteurs had tried to define the conditions which would justify such restrictions. Those were that restrictions, in order to be legitimate, must be accoroding to law, proportional to the risks involved and compatible with the standards of a democratic society.

42. In his view the importance of the condition of necessity had been overlooked by the Special Rapporteurs. If a measure was not necessary, it was not appropriate to take it; it must be necessary from the point of view of benefiting both society and the individual. Some restrictions on most freedoms were often necessary but they must be imposed in such a way as to achieve the greater protection of those freedoms. Apart therefore from the issue of legality, restrictions on freedom of opinion must be clearly necessary.

43. Reference had also been made to the New World Information Order which had been rejected by the Western countries. In his view the New World Information Order was necessary in order to protect freedom of opinion because, without objective and reliable information, it would be difficult to have a truly democratic society. He invited attention to the intent of the World Information Order which was to provide for the equitable sharing of the means of information which had hitherto been a preserve of the western countries.

44. He congratulated Mrs. Warzazi on her very comprehensive study on traditional practices affecting the health of women and children (E/CN.4/Sub.2/1991/6) and her eloquent introduction. Traditional practices, widespread in Africa, were accepted because of ignorance. Only when people were informed of the dangers involved could they be persuaded to abandon such practices. He therefore requested Mrs. Warzazi to use all the information media in Africa to warn of those dangers.

45. In connection with the report by Mrs. Ksentini (E/CN.4/Sub.2/1991/8) he pointed out that, especially in developing countries, there was an exploiting adult behind every beggar child. As an example of government action to improve the condition of children, he cited the military school for children in his country which trained gifted children as military doctors and engineers.

46. Turning to Mr. van Boven's study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1991/7 and E/CN.4/Sub.2/1990/10), he stressed the importance of State responsibility in compensation for human rights violations. State officials who violated human rights under the banner of the State could be punished under criminal law but it ought to be possible for civil proceedings to be taken against the State for redress for violation of human rights by a State official. He wondered, moreover, whether the State should be obliged to grant compensation in cases where the victim himself was largely responsible.

47. He very much hoped that Mr. van Boven's work would ultimately lead to an international convention, signed and ratified by States and part of domestic jurisdiction.

48. Mr. SACHAR, commenting on the report on the right to freedom of opinion and expression by Mr. Türk and Mr. Joinet (E/CN.4/Sub.2/1991/9), said that most countries recognized that there could not be an unrestricted right of freedom of expression. Difficulties arose because the restrictions were not spelt out. In his country the right to freedom of speech and expression was enshrined in article 19 of the Constitution which also spelt out the restrictions that could be imposed, inter alia in the interests of State sovereignty, integrity and security and public order, decency and morality. The decision as to whether restrictions were reasonable and proportionate was a matter for the courts and not for the executive or the legislature.

49. He did not agree with the Special Rapporteurs' suggestion in paragraph 23 of their report that a person advocating racism or violating the law on defamation should not be imprisoned. He believed that such violations were so serious that imprisonment was justified, damages alone being insufficient.

50. In paragraph 24 it was stated that a suggestion had been made to the Special Rapporteurs that they should also deal with violations by organizations practising political violence, private groups or individuals. He did not agree that that suggestion should be adopted. Some Governments might even seek to justify their violation of human rights if the Sub-Commission carried out such a study. However difficult it was, a distinction had to be kept between State violence and private violence.

51. He endorsed the Special Rapporteurs' views on contempt of court, which he considered an outmoded concept.

52. In connection with the protection of journalists, he believed that there was a need to compel States parties to frame a law that would permit the confidentiality of sources of information.

53. He supported the suggestion in Mrs. Warzazi's study (E/CN.4/Sub.2/1991/6) that a seminar on traditional practices affecting the health of women and children should be held in Asia. Such a seminar would be of great assistance in demonstrating the gap between constitutional provisions and the actual status of women.

54. He suggested that the next update of Mr. van Boven's study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1991/7 and E/CN.4/Sub.2/1990/10), should include action taken by States parties on the right to compensation. In some cases compensation had been accorded when persons had died in police custody in India, although there was no law on the matter.

55. Referring to paragraph 63 of Mrs. Ksentini's report on human rights and the environment (E/CN.4/Sub.2/1991/8), he suggested, in connection with the right to development, that consideration be given to a right of resettlement for people who were displaced by the building of large dams or other works.

56. Mr. TREAT said that it was most unfortunate that time constraints prevented the Sub-Commission from giving adequate attention to the four excellent papers before it. Moreover, it was a sad consequence of the Sub-Commission's crowded agenda that many serious violations of human rights in small countries or territories had to be neglected.

57. The situation in Bougainville, which had been brought to the Sub-Commission's attention by a number of non-governmental organizations, was a case in point. He understood that no draft resolution or other action was being proposed, but a number of members of the Sub-Commission believed that it could not remain indifferent to the appeals made by the people of Bougainville. They were encouraged by the current talks being held under the auspices of the Commonwealth Secretariat and hoped that all parties would cooperate to find a lasting solution to the problem. He appealed to the authorities to ensure that humanitarian assistance was provided to all the people of Bougainville without hindrance. He was sure that all members would welcome information on the situation as it developed.

58. Because of lack of time, he would refer only to the interesting study by Mr. Türk and Mr. Joinet on the right to freedom of opinion and expression (E/CN.4/Sub.2/1991/9). On the subject of press restriction during times of armed conflict, he referred to Mrs. Palley's comments at the previous meeting concerning the loss of many Iraqi soldiers' lives during the Gulf war. That raised the theory of moral equivalency and the notion that the aggressor's moral position was equal to that of the defender. All who defended human rights deplored loss of life, whether of an aggressor or of a defender; but once a decision had been taken to fight aggression, those charged with leading the defending forces in the Gulf war had been given a mandate to keep the war as short as possible and to minimize loss of life. Clearly the winner of a conflict would have fewer casualties than the loser. He recalled the bombing of Cologne by the British forces in the Second World War, which had resulted in the deaths of thousands of civilians. That had not been the fault of Winston Churchill, but of Adolf Hitler, the aggressor. There was no moral equivalency.

59. In deploring the loss of life that occurred in war, there should be no confusion of moral values. Leaders had to make hard decisions in time of war. But he did not challenge the motivation or judgement of those who had taken such decisions, principally on behalf of democratic Governments. In fact, in no other war had it been possible to achieve such a degree of accuracy in attacking military targets. There would long be discussion on whether the war had been brought to an end at the right time, but he believed that the decisions taken under urgent circumstances had been taken with the best of intentions.

60. Mr. Türk and Mr. Joinet had very properly outlined the criteria for freedom of expression and information in armed conflicts as legality, legitimacy and proportionality. Paragraph 120 of the report read: "In the 'Gulf war', where the coalition countries were in action far from their own territory ... article 4 of the Covenant ... was inappropriate to justify any derogations from freedom of expression and information." It was true that the

major partners in the coalition had been far from their own territory, but Saudi Arabian and Egyptian soldiers, threatened by the aggression of Iraq, were certainly not.

61. There was a clear advantage if one side in a conflict had freedom of expression and the other exercised total censorship. It would hardly be possible for the parties to a conflict to agree on how to handle the media. In the Gulf war some 1,400 media persons had been present at the front. In such circumstances military discipline had to be imposed, and he therefore suggested that such considerations ought to have been taken into account in the report.

62. Mr. ALFONSO MARTINEZ said that he shared the concern expressed by other members regarding the short time allotted for consideration of the five reports before the Sub-Commission.

63. The report on the right to freedom of opinion and expression (E/CN.4/Sub.2/1991/9) was extremely valuable, especially as it reflected events which had occurred since the Sub-Commission's forty-second session. He agreed with the authors that freedom of opinion and expression was a fundamental right which affected the exercise of most other human rights. The Sub-Commission had to consider under what circumstances it was permissible to curtail that right in a democratic society. The points made in paragraph 18 had to be seen in the light of paragraph 81, where the reference to a democratic society was presumably based on the contents of article 29 of the Universal Declaration of Human Rights. It must, however, be borne in mind that what was meant by a democratic society could not be determined in a one-sided way; it was up to each people to decide what kind of democracy should be applied in its own country.

64. Paragraphs 26 and 27 appeared to confer a kind of privileged status on certain categories of persons. Journalists obviously occupied a special position as far as freedom of expression was concerned, but he was opposed to giving them a special status. If that were done, special arrangements would have to be made for other categories of persons, too, with eventually harmful results.

65. In paragraphs 28 and 29, concerning positive developments that had taken place in 1990 and 1991, the authors had rightly also drawn attention to some of the dangers involved.

66. Chapter II of the report dealt with a particularly sensitive problem - namely, freedom of opinion and expression in the context of the struggle against racism. In some countries, freedom of opinion and expression and freedom of the press were used to promote campaigns in favour of racism and for purposes of war propaganda. That aspect merited further consideration.

67. As far as the example of the Gulf war in the context of freedom of expression and information in armed conflicts was concerned, he had been in Europe during the war in question and had noticed that information on it had been censored and openly manipulated, as was reflected in paragraph 124 of the report. That point should be stressed, and the Sub-Commission should try to find ways of preventing such situations from occurring in future. He agreed

with the authors that in the case of armed conflicts the right to freedom of expression and to freedom of the press should be exercised with a view to securing a prompt peace, as suggested in paragraph 137.

68. One key failing of the report was its omission of any reference to the practical realities governing the exercise of the freedom of expression and freedom of the press. In countries with free market economies, where those who held economic power had greater opportunities to disseminate ideas, there was a growing trend towards the concentration of the mass media. For example, in France the Hersant Corporation owned 38 per cent of the mass media. Thus the freedom of expression of Mr. Hersant and his associates was infinitely greater than that of any ordinary French citizen. Similar situations occurred in other countries where organs of the press served as vehicles for the sale of ideas.

69. In general, however, the report was a good one, and the Sub-Committee should continue to concern itself with the subject-matter with which it dealt.

70. The report on discrimination against HIV-infected people or people with AIDS (E/CN.4/Sub.2/1991/10) failed to deal with one important element - the inability of poor persons infected with AIDS to afford high-cost drugs, which amounted to an insidious case of discrimination. With regard to the Special Rapporteur's recommendations, he did not agree that the scope of the study should be broadened but he was in agreement with recommendations Nos. (2) and (3).

71. He greatly appreciated Mrs. Ksentini's report on human rights and the environment (E/CN.4/Sub.2/1991/8). The link between the right to a healthy environment and other human rights was clear, since a healthy environment was a prerequisite for the exercise of the right to life and the right to health. Mrs. Ksentini was to be particularly congratulated on having drawn attention to the important effects of environmental degradation for indigenous populations. That aspect needed further study. Another aspect that should be given greater attention was the question as to how to combine the right to a healthy environment with the right to development.

72. Mr. van Boven's study on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1991/7) gave an account of some of the problems involved. He hoped that Mr. van Boven would continue his work and put forward some more substantial conclusions in his next report.

73. Mrs. Warzazi, in her report (E/CN.4/Sub.2/1991/6), had done a fine job in bringing to the Sub-Commission's attention the extensive range of traditional practices which adversely affected the health of women and children. He agreed with her conclusions and hoped that she would continue to study the matter and that the Centre for Human Rights would provide her with a suitable assistant.

74. Mr. Joinet resumed the Chair.

75. Mrs. WARZAZI said that, in his study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human

rights and fundamental freedoms (E/CN.4/Sub.2/1991/7), the Special Rapporteur, Mr. van Boven, had mentioned the effective remedies referred to in international instruments. However, the situation in that regard was rather vague and did not automatically imply that compensation would be provided. Compensation was either to be defined by the law, which could also be vague, or was to be defined as just and fair, without specifying what criteria would be adopted or whether the compensation was to be just and fair in the view of the victim or in the view of the State responsible for paying it. Consequently, in her opinion, international law was not satisfactory in that respect. She agreed with the Special Rapporteur's view that the State had to be sued if the violations had taken place under the administration of the Government in office.

76. She also agreed with the Special Rapporteur regarding prescription. Some States might be led to claim, on behalf of their peoples, compensation from former colonial powers, since, as the Special Rapporteur had stated, time did not attenuate the grief of persons who had lost their loved ones or who had been physically or psychologically maimed. In that connection, she wished to draw the Special Rapporteur's attention to the recent First World Conference on Reparations for Africa, at which diplomats, economists and Africanists had considered that Europe and America should foot the bill for having systematically pillaged Africa for three centuries through colonialism and slavery. It had been pointed out that every year Germany paid millions of dollars in compensation to Israel, that the United States of America had compensated Japanese held in concentration camps during the Second World War, and that more recently the United Nations had decided that Iraq should pay for the exactions and violations which it had committed in Kuwait. According to the participants, one way of arranging compensation would be to cancel part of the African countries' debts - a practice which could spread to other continents. Thus compensation could be extended from individuals or groups of individuals to whole peoples collectively if paragraph 1 of Sub-Commission resolution 1988/11 was interpreted broadly. Indeed, the exercise on which the Special Rapporteur had embarked might, as a result of its complexity and of the thorny issues to which it could give rise, take an exciting turn. She was confident that the Special Rapporteur would be able to cope with the formidable difficulties which he would encounter if he really wished to take up all violations provided for in the relevant international instruments.

77. The right to a healthy environment was a logical consequence of the rights provided for by the International Covenant on Economic, Social and Cultural Rights in article 11 (1), concerning health and welfare, including housing, of article 11 (2), concerning freedom from hunger and the development and utilization of natural resources, and of article 12, concerning physical and mental health. Moreover, the Universal Declaration of Human Rights stated, in its preamble, that human beings should enjoy freedom from want; in that context, the terrible environment in which millions of hungry persons lived could not be ignored. The right to live in a healthy environment was a human right, and concern for a healthy environment did not include only concern for the ozone layer, the deterioration of nature, deforestation and drought. It also included concern regarding dilapidated housing and non-existent or poor sanitation and their moral and physical impact on the persons concerned and the criminal violations of human rights that ensued. It was also important to respect the ancestral lands of indigenous peoples, which were sometimes profaned for military purposes or for use as refuse dumps.

78. Furthermore, it should be borne in mind that the degradation of the environment was largely due to the progress of science and technology, which enriched the developed countries. In the case of the developing countries, however, it was the violation of their economic rights that was leading to the degradation of nature. The report should confirm the relationship between the environment and human rights by considering what restrictions should be placed on other human rights in order to implement the right to a healthy environment, having regard to the need for solidarity.

79. She fully agreed with the analysis made by the Special Rapporteurs on freedom of opinion and expression. Absolute freedom of expression existed nowhere in the world. It was certainly legitimate to require that such a dangerous freedom should be restricted if its implementation had the effect of violating other human rights. In any case, not everyone had the same degree of freedom of expression, the owners of the mass media having greater freedom of expression than ordinary citizens. The Gulf war had shown that when the basic interests of States were at stake, the principles so loudly proclaimed by some were forgotten, to the detriment of the mass media. Advance censorship had been imposed on the United States and British press, and at the present time nobody could claim that there was full freedom of information and expression and no country respected freedom of expression as an absolute right.

80. Mr. AL-KHADHI (Observer for Iraq), making a statement equivalent to the right of reply, said that Mr. Treat's justification, in military terms, of the violations of international instruments applicable to armed conflicts lacked sufficient grounds in law. The use of prohibited weapons was a direct violation of human rights. It might have limited the number of United States casualties, but it had also led to the death of thousands of Iraqi children and civilians.

The meeting rose at 1 p.m.